must be calculated to frighten ordinarily gentle and well trained horses. *Poilet v. Simmons,* 106 Pa. St. 95. Still other courts hold that it is not an actionable defect unless the traveler actually comes into contact with the object. *Cook v. Charlestown,* 98 Mass. 80; *contra*: *Bartlett v. Hoockett,* 48 N. H. 18.

HOMICIDE—DUTY TO RETREAT.—MILLER V. STATE, 119 N. W. 850 (WIS.).—*Held,* that the common law rule as to the duty of one attacked to "retreat to the wall" or so far as he can, or so far that to go further would rather increase than decrease the danger, is no longer the law.

The doctrine of "retreat to the wall" had its origin before the general introduction of fire-arms and to-day seems to be considered obsolete or loosely construed in the majority of states. The idea of retreat is lost in the greater question, did the defendant, when assaulted, believe or have reason to believe that the use of a deadly weapon was necessary to his own safety. *Runyan v. State,* 57 Ind. 80; *Philips v. Commonwealth,* 63 Ky. (2 Duv.) 328. Even where the courts are more strict in their application of this rule, the suddenness of the attack, the peril of exposing the person during flight, of endangering a third party, and the fact that those in a position of peril are not called upon to weigh with a nicety the question of what is the proper line of action, is taken into consideration. *People v. Fiori,* 108 N. Y. S. 416; *People v. Macard,* 73 Mich. 15; *People v. Harper,* 2 Wheeler Cr. Cas. 347. At variance with the more general modern tendency is the old common law rule that no one is excused for taking human life if with safety to his own person he could have retired from the combat. This more peaceable view is still held in many jurisdictions. *State v. Honey,* 65 Atl. 764 (Del.); *People v. Mallon,* 189 N. Y. 520; *State v. Kennedy,* 91 N. C. 572.

HOMICIDE—UNLAWFUL ARREST—RIGHT TO RESIST.—PERDUE V. STATE, 63 S. E. 922 (GA.).—*Held,* that a citizen whom it is attempted unlawfully to arrest has a right to resist force with force proportionate to that being used to arrest him; and if, in the exercise of such right of resistance, he kills an officer who is unlawfully attempting to arrest him he is guilty of no offense. Powell, J., *dissenting.*

A large number of jurisdictions hold with the above case, that no crime is committed in the killing of an officer while resisting unlawful arrest. *Simmerman v. State,* 14 Nebr. 568; *State v. Oliver,* 2 Houst. (Del.) 585; *Starr v. U. S.,* 153 U. S. 614. Other courts hold that there must be danger of bodily harm to the defendant before the killing of a person attempting to make an illegal arrest becomes justifiable. *State v. Row,* 81 Iowa 138; *Bowling v. Commonwaelth,* 7 Ky. L. Rep. 821; *State v. Cantieny,* 34 Minn. 1. In *Williams v. State,* 44 Ala. 41, it is held that it is the duty of a person to submit to the illegal arrest and seek redress at law. On the other hand the English courts and those in some American jurisdictions hold that when a police officer is slain while attempting to make an unlawful arrest, the offense is reduced from murder to man-

slaughter. *Reg. v. Lockley,* 4 Fost. & F. 155; *Rex. v. Thompson,* 1 Moody C. C. 80; *State v. Scheele,* 57 Conn. 307.

INSURANCE—LIFE INSURANCE—EXECUTION OF INSURED FOR CRIME.—McCUE v. N. W. MUT. LIFE INS. CO., 167 FED. 435.—*Held,* that as the laws of Wisconsin govern in this case the rule laid down by the Wisconsin courts must be followed and so the fact that the insured was executed for a crime did not bar a recovery on the policy by his heirs, where it contained no provision excluding such risk. Waddill, Dist. J., *dissenting.*

The courts are about evenly divided on this point. Some hold that the legal execution of the insured for a crime committed by him is no defense to a suit for his policy in the absence of any provision of the policy exempting the company from liability in that event. *Collins v. Metro. Ins. Co.,* 232 Ill. 37. While others hold that where the insured has been convicted and executed for his crime the beneficiaries cannot recover on the insurance policy. *Burt v. Union Cent. Ins. Co.,* 187 U. S. 362. Public policy will not permit a recovery by heirs through wrong of insured. *Schreiner v. High Court,* 35 Ill. App. 576. But it is stated that the liability of the insurer is not avoided on the ground of public policy by the fact, that the insured is executed for a crime. *Greenhood on Public Policy,* pp. 1, 2.

MASTER AND SERVANT—IDENTITY OF EMPLOYER—INDEPENDENT CONTRACTOR.—BOWIE v. COFFIN VALVE CO., 86 N. E. 914 (MASS.).—*Held,* that unless an employee knew he was working for an independent contractor no relation of employer and employee existed between the employee and the contractor, since he could not be transferred from one employer to another without his consent, expressly given or implied.

The general rule in these cases seems to be that he who agrees to furnish the completed work through servants over whom he retains control is responsible for their negligence in the conduct of it. *Standard Oil Co. v. Anderson,* 81 C. C. A. 399; *Higgins v. Western U. T. Co.,* 156 N. Y. 75. And the mere fact that a contractor's servant is sent to do work pointed out to him by the owner will not make him a servant of the owner. *Driscoll v. Towle,* 181 Mass. 416; neither will the owner's right to inspect the work, *Pack v. N. Y.,* 4 Seld. 222 (N. Y.); nor payment of wages by the owner, *The Harold,* 21 Fed. Rep. 428; nor the fact that the contractor's servants and the master's servants are engaged in a common employment, *Morgan v. Smith,* 159 Mass. 570. But a general servant of one person may, for a particular occasion, become the servant of another, *Delaware L. & W. Ry Co. v. Hardy,* 59 N. J. L. 35; and for the particular employment he is the servant of the other, *Hasty v. Sears,* 157 Mass. 123. Though in all cases it seems the servant must consent to the transfer and accept the other person as his master. *Ward v. New England Fibre Co.,* 154 Mass. 419.

MASTER AND SERVANT—INJURIES TO THIRD PARTIES—INDEPENDENT CONTRACTOR—LIABILITY OF EMPLOYER—BLASTING.—KENDALL v. JOHNSON,